IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JONATHAN EDWARD DANLEY,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 1:16-CV-03094-RWS
WOOFS SPORTS BAR; H.H.S.T. SPORTING GROUP LTD.; and GREGORY G. HUGHES, INDIVIDUALLY	:	
Defendants.	:	

ORDER

This case comes before the Court on Plaintiff's Motion to Strike Defendants' Answer and/or Motion for More Definite Statement [6] and Defendants' Motion to Dismiss [7]. After a review of the record, the Court enters the following Order.

Background[1]

This case arises out of Jonathan Edward Danley's ("Plaintiff") employment at Woofs Sports Bar. On August 23, 2016, Plaintiff brought this

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[1] As the case is before the Court on a Motion to Dismiss, the Court accepts as true the facts alleged in the complaint. Cooper v. Pate, 378 U.S. 546, 546 (1964).

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action, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*, against Woofs Sports Bar ("Woofs"), H.H.S.T. Sporting Group LTD ("H.H.S.T."), and Gregory G. Hughes ("Hughes") (collectively "Defendants").

Plaintiff worked as a chef/cook at Woofs Sports Bar, which is owned by H.H.S.T. (Compl., Dkt. [1] ¶¶ 3–4.) Plaintiff alleges that during his employment, Hughes, an owner and operator of Woofs, was an employer as defined by the FLSA because he exercised the authority to hire and fire employees, determined their work schedules, and controlled Woofs' finances and operations. (Id. ¶ 5.) An hourly employee, Plaintiff alleges that he was not paid time and one-half compensation for hours worked in excess of forty per work week, as mandated by the FLSA. (Id. ¶ 15.) He also alleges that he was fired in retaliation after complaining about Defendants' pay practices. (Id. ¶ 21.)

On September 21, 2016, Defendants filed their Answer and Counterclaim [4]. In response, Plaintiff filed a Motion to Strike Defendants' Answer and/or Motion for More Definite Statement [6]. Defendants subsequently and simultaneously filed an Amended Answer and Counterclaim [9] as well as a Motion to Dismiss [7] for failure to join indispensable parties.

The Court now considers the parties' motions in turn.

Discussion

I. Plaintiff's Motion to Strike Defendants' Answer and/or Motion for More Definite Statement [6]

In its motion, Plaintiff makes various complaints about the format and organization of Defendants' Answer [4]. In response, Defendant filed an Amended Answer and Counterclaim [9] and a separate Motion to Dismiss [7] simultaneously with its response to Plaintiff's motion. These filings correct those problems identified by Plaintiff. Thus, Plaintiff's Motion to Strike Defendant's Answer and/or Motion for More Definite Statement [6] is **DENIED as moot**.

II. Defendants' Motion to Dismiss

A. Legal Standard

"Rule 19 states a two-part test for determining whether a party is indispensable." Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1279 (11th Cir. 2003). First, the Court must determine whether, under the standards set forth in Rule 19(a), joinder should occur if feasible. Id. at 1289. Second, if joinder should occur but is not feasible, the Court must determine whether, under the standards set forth in Rule 19(b), litigation may continue without joinder. Id. The burden is on the Defendant as the moving party to establish indispensability to support dismissal for failure to join an indispensable party. Ship Const. & Funding Serv. (USA), Inc. v. Star Cruises PLC, 174 F. Supp 2d 1320, 1325 (S.D. Fla. 2001).

Under Rule 19(a), a person is a required party if joinder will not deprive the Court of personal or subject-matter jurisdiction if: "(A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1).

At the motion to dismiss stage, "all-well pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1273 n.1 (11th Cir. 1999). However, the same does not apply to legal conclusions set forth in the complaint. Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252, 1260 (11th Cir. 2009) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Furthermore, the court does not "accept as true a legal conclusion couched as a factual allegation." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555. Using the framework articulated above, the Court considers Defendants' Motion to Dismiss.

B. Discussion

Defendants argue that Plaintiff's suit should be dismissed for failure to join indispensable parties as required under Federal Rule of Civil Procedure 19(b), or, in the alternative, that the proceeding should be stayed until this deficiency is cured. They claim that since Gary Sisney and Bill Hamilton co-owned, with Defendant Hughes, H.H.S.T. from August 2002 to January 1, 2016, they are indispensable parties. (Mot. to Dismiss, Dkt. [7] ¶ 3.) Their absence, according to Defendants, will impair Sisney's and Hamilton's abilities to protect their own interests and subject them to a possible future suit and may subject the current Defendants to multiple or inconsistent obligations. (Id. ¶ 6–7.) Plaintiff responds that Hughes is not being sued due to his ownership interest in H.H.S.T. He is instead named in this action individually as an employer under the FLSA. (Pl.'s Resp. to Defs.' Mot. to Dismiss, Dkt. [11] at 4.)

Since Hughes is named as a Defendant individually, Sisney and Hamilton are not necessary parties that should be joined under Rule 19. "[A] corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages." Patel v. Wargo, 803 F.2d 632, 637–38 (11th Cir. 1986). While the facts in the Complaint, taken as true, are sufficient to show that Hughes falls within this category of corporate officer, nothing in the Complaint or Defendant's motion suggests the same for Sisney or Hamilton. Defendants argue that they are necessary parties because they were co-owners, along with Hughes, of H.H.S.T. They, however, offer no additional facts as to why either would be considered a corporate officer with operational control as necessary for individual liability. H.H.S.T. is named as a party in this action. While a claim for indemnification may be available against Sisney and Hamilton if H.H.S.T. is found liable, the possibility of indemnification plays no role in the analysis of whether "complete relief" will

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be available under Rule 19(a). See, e.g., DeWitt v. Daley, 336 B.R. 552, 556 (S.D. Fla. 2006).

Even if Sisney and Hamilton, as individuals, were employers under the FLSA, they would still not be necessary parties under Rule 19(a). The FLSA provides for joint and several liability of joint employers. Patel, 803 F.2d at 637–38. Thus, Plaintiff can obtain complete relief from any of the three named Defendants without making Sisney and Hamilton parties to the case. Again, the possibility of a claim of indemnification does not alter this analysis under Rule 19(a). See, e.g., DeWitt, 336 B.R. at 556.

Defendants have therefore failed to meet their burden of establishing that Sisney and Hamilton are indispensable parties under Rule 19. Thus, Defendants' Motion to Dismiss [7] is **DENIED**.

Conclusion

In accordance with the foregoing, Plaintiff's Motion to Strike Defendants' Answer and/or Motion for More Definite Statement [6] is **DENIED as moot**. Defendants' Motion to Dismiss [7] is **DENIED**.

SO ORDERED, this 22nd day of November, 2016.

Richard W. Story

RICHARD W. STORY
United States District Judge